IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4510 of 2007()

CRIME NO.23/07 OF EXCISE RANGE, THRISURR.

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PETITIONERS

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1. INDIRA AGED 40 YEARS,
   PONNUKKARA DESOM,PUTHUR VILLAGE, THRISSUR TALUK,
   THRISSUR DISTRICT.

2. VENU, AGED 48 YEARS,
   S/O.KOROTH KOCHUNNI,
   PONNUKKARA DESOM, PUTHUR VILLAGE,
   THRISSUR TALUK,THRISSUR DISTRICT.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

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1. STATE OF KERALA
   REP.BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA
   ERNAKULAM.

2. EXCISE INSPECTOR
   EXCISE RANGE, THRISSUR.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4510 of 2007

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Dated this the 31st day of July, 2007

O R D E R

Application for anticipatory bail. The petitioners are spouses. They face allegations under Section 55(i) of the Kerala Abkari Act. The crux of the allegations is that when the Excise Party, on receipt of prior discreet information that the accused were carrying on the business of sale of liquor in their residential premises without legal authority, went to the scene of the crime. The first accused, who was present at the scene pointed out to them six litres of I.M.F.L., which was kept concealed in the premises. Seizure was effected. The first accused could not be arrested as the Excise Party did not consist of any woman police official. Crime has been registered. The petitioners are accused 1 and 2. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The total quantity of I.M.F.L. recovered is only 6 litres. Each of the accused is entitled to possess 3 litres. There is no contention that the liquor seized is spurious or

that tax, rent, cess etc. payable in respect of the liquor has not been paid. In these circumstances the allegations raised against the petitioners are unfounded. They may be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. The totality of circumstances eloquently suggest that 6 litres of I.M.F.L. kept concealed in the premises was intended for sale and not for personal consumption of the petitioners. It is impossible at this stage to come to the conclusion that possession of the liquor was bonafide for the personal consumption and not for commission of the offence under Section 55(i) of the Abkari Act, submits the Prosecutor.

4. I have considered all the relevant inputs. On an anxious consideration of all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. It is impossible at this stage and with the available inputs to come to a safe conclusion that the quantity of liquor concealed in the premises of the petitioners and recovered - from an adjacent shed - was possessed bonafide and not for sale by the petitioners. At any rate, I am satisfied that there are no circumstances which can persuade this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners

must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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